

February 12, 2004

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

DOCKETED
USNRC

Before the Presiding Officer

February 18, 2004 (1:48PM)

In the Matter of)	
)	
Nuclear Fuel Services, Inc.)	Docket No. 70-143
)	Special Nuclear Material
)	License No. SNM-124
(Blended Low Enriched Uranium Project))	

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

**APPLICANT'S ANSWER TO THIRD REQUEST FOR HEARING BY KATHY
HELMS-HUGHES REGARDING NUCLEAR FUEL SERVICES' PROPOSED
BLENDED LOW-ENRICHED URANIUM PROJECT**

Applicant Nuclear Fuel Services, Inc. ("Applicant" or "NFS") files this answer to the "Third Request for Hearing by Kathy Helms-Hughes Regarding Nuclear Fuel Services' Proposed Blended Low-Enriched Uranium ["BLEU"] Project" (February 2, 2004) ("3rd Req."). NFS submits this answer pursuant to 10 C.F.R. § 2.1205(g). NFS respectfully requests that the Presiding Officer reject the request for lack of standing and for failure to submit an area of concern germane to this proceeding.

I. FACTUAL AND LEGAL BACKGROUND

A. Procedural Background

On October 23, 2003, NFS requested a third amendment to Special Nuclear Material License No. SNM-124 to authorize special nuclear material processing operations in the Oxide Conversion Building ("OCB") and Effluent Processing Building ("EPB") at its existing nuclear fuel fabrication and uranium recovery facilities in Erwin, Tennessee.¹

The amendment is the third of three amendments that will be necessary to support process

¹ Nuclear Fuel Services, Inc., Notice of Receipt of Amendment Request and Opportunity to Request a Hearing for Oxide Conversion Building and Effluent Processing Building in the Blended Low-Enriched Uranium Complex, 68 Fed. Reg. 74,653 (Dec. 24, 2003).

operations associated with the portion of the BLEU Project that will be performed at NFS. 68 Fed. Reg. at 74,653. The BLEU Project is part of a Department of Energy (“DOE”) program to reduce stockpiles of surplus high enriched uranium (“HEU”) through re-use or disposal as radioactive waste.² Re-use of the HEU as low enriched uranium (“LEU”) is the favored option of the DOE program because it converts nuclear weapons grade material into a form unsuitable for weapons, it allows the material to be used for peaceful purposes, and it allows the recovery of the commercial value of the material. 1st EA at 1-3.

On February 28, 2002, NFS requested its first BLEU Project license amendment to authorize the storage of LEU-bearing materials at the Uranyl Nitrate Building (“UNB”), to be constructed at NFS’ Erwin facilities.³ On October 11, 2002, NFS requested its second license amendment to authorize modification to its processing operations in the BLEU Preparation Facility (“BPF”) at its Erwin facilities.⁴ Those amendment requests were the subject of several hearing petitions whose resolution is being held in abeyance by the Presiding Officer pending the expiration of the opportunity for hearing on this third license amendment request. Nuclear Fuel Services, Inc. (Erwin, Tennessee), LBP-03-1, 57 NRC 9, 17 (2003).

In June 2002, the NRC Staff published the Environmental Assessment and issued a Finding of No Significant Impact (“FONSI”) for NFS’s first license amendment.⁵

² U.S. Nuclear Regulatory Commission, Division of Fuel Cycle Safety and Safeguards, NMSS, Environmental Assessment for Proposed License Amendments to Special Nuclear Material License No. SNM-124 Regarding Downblending and Oxide Conversion of Surplus High-Enriched Uranium (June 2002) (“1st EA”) at 1-3.

³ Environmental Statements; Availability, etc.: Nuclear Fuel Services, Inc., Notice of docketing, etc., 67 Fed. Reg. 66,172 (Oct. 30, 2002).

⁴ Nuclear Fuel Services, Inc., Notice of Receipt of Amendment Request and Opportunity to Request a Hearing, 68 Fed. Reg. 796 (Jan. 7, 2003).

⁵ Environmental Assessment and Finding of No Significant Impact of License Amendment for Nuclear Fuel Services, Inc. 67 Fed. Reg. 45,555, 45,558 (2002).

Along with assessing the impacts of the first amendment, the 1st EA also assessed the impacts of the second and third amendments—i.e., the entire BLEU Project—for the purpose of assessing connected actions and cumulative effects and concluded that those amendments also would not result in significant adverse impacts to the environment. 1st EA at 5-1. On July 7, 2003, the Staff issued the first license amendment and its supporting Safety Evaluation Report (“SER”) concerning the activities to be conducted under that amendment.⁶ The SER concluded that “there is reasonable assurance that the activities to be authorized by the issuance of an amended license to NFS will not constitute an undue risk to the health and safety of the public, workers, and the environment.” 1st SER at 94 (emphasis added).

In September 2003, the Staff published the 2nd EA and issued a FONSI for the second license amendment.⁷ The 2nd EA presented updated information and analysis and concluded, as a final matter, that the second license amendment would not result in any significant impacts to the environment. *Id.* at 5. On January 13, 2004, the Staff issued the second license amendment and its supporting SER concerning the activities to be conducted under that amendment.⁸ The SER concluded that “there is reasonable assurance that the activities to be authorized by the issuance of an amended license to NFS will not constitute an undue risk to the health and safety of the public, workers, and the environment.” 2nd SER at 21.0-1 (emphasis added).

⁶ Letter from Susan M. Frant, Chief, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, USNRC, to B. Marie Moore, Vice President, Safety and Regulatory, NFS (July 7, 2003); Safety Evaluation Report: Nuclear Fuel Services, Inc., Amendment 39 (TAC NOS. L31688, L31739, L31721 and L31748) – to Authorize Uranyl Nitrate Building at the Blended Low-Enriched Uranium Complex and Possession Limit Increase (July 2003) (“1st SER”).

⁷ Environmental Assessment and Finding of No Significant Impact for License Amendment Request Dated October 11, 2002, Blended Low-Enriched Uranium Preparation Facility (Sept. 17, 2003) (“2nd EA”).

⁸ Letter from Gary S. Janosko, Chief, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, USNRC, to B. Marie Moore, Vice President, Safety and Regulatory, NFS (Jan. 13, 2004); Safety Evaluation Report for Nuclear Fuel Services, Inc., License Amendment 47, Blended Low-Enriched Uranium Preparation Facility (January 2004) (“2nd SER”).

The Staff has not yet published the EA and FONSI (or EIS) for the third license amendment. Nor has the Staff yet published the SER for or approved the third amendment.

B. The Third License Amendment Application

Pursuant to the third license amendment request and as described in the 1st EA, NFS will convert low-enriched liquid uranyl nitrate solutions into solid uranium oxide (UO₂) powder at the OCB and will operate effluent processing facilities at the EPB. 1st EA at 1-3; see also 68 Fed. Reg. at 74,653. Low-enriched uranyl nitrate solution will be converted to UO₂ powder in the OCB using the Framatome ANP, Inc. process, which has been in use for over 20 years by Framatome ANP at its Richland, Washington plant. 1st EA at 2-5. In that process, the uranyl nitrate solution is mixed with ammonium hydroxide and water to produce ammonium diuranate solids. Id. The solids are then separated using a continuous centrifuge and cross filter. Id. The solids are next dried in a screw dryer and then calcined in a rotary kiln under a flow of steam and hydrogen to reduce the solids to UO₂ powder (which is then shipped off site for further processing). Id. at 2-5 to 2-6. The dilute stream from the centrifuge is passed through ion exchange columns to extract uranium, which is recycled to the oxide conversion process. Id. at 2-7. The stream is then sent to the EPB for further treatment. Id. In addition to oxide conversion, in the OCB NFS will also dissolve natural uranium trioxide (UO₃) in nitric acid to convert it into uranyl nitrate solution, which will then be shipped off-site for further processing. Id.

In the EPB, the liquid effluent from the OCB will be treated. First, sodium hydroxide will be added to the effluent and ammonia will be recovered and returned to the oxide conversion process. Id. The remaining effluent, consisting primarily of dilute sodium nitrate in water, will be fed to an evaporator, concentrated, and further processed into a solid waste for disposal. Id. The overhead's stream from the evaporator will be

held in tanks, sampled for verification of compliance with NFS's pretreatment permit, and then discharged to the sanitary sewer. Id.

The EA found that the three proposed amendments for the BLEU Project would not result in significant adverse impacts to the environment. EA at 5-1. Normal operations are not expected to have a significant impact on air quality or water quality. See id. at 5-1 to 5-3. Specifically, discharges from the proposed action (the BLEU Project) are not expected to have a significant impact on the water quality in the Nolichucky River. Id. at 5-2. With respect to potential accidents, the EA found that the safety controls to be employed in plant processes for the BLEU Project will ensure that the processes are safe. Id. § 5.1.2. The environmental impacts of the third license amendment will be only part of the impacts caused by the BLEU Project as a whole. See id. at 2-9 to 2-13. Thus, the impacts of the amendment will also be insignificant.

C. Ms. Helms-Hughes' Hearing Request

Ms. Helms-Hughes filed her request within the time granted by the Commission's extension for filing a hearing request on the third license amendment. At the outset, she asserts standing by incorporating by reference the "discussion of standing, information and arguments contained in her declaration filed Nov. 29, 2002;⁹ . . . Jan. 6, 2003, [Kathy Helms-Hughes] Response to NFS's Motion to Deny Helms-Hughes Request for Standing and Leave to Intervene ("1st Reply"); her Jan. 26, 2003, Response to Applicant's Motion to Strike;¹⁰ her Feb. 6, 2003, Request for Hearing and Leave to Intervene;¹¹ [and] her

⁹ Declaration of Kathy Helms-Hughes (Nov. 29, 2002).

¹⁰ Kathy Helms-Hughes Response to Applicant's Motion to Strike Part of Helms-Hughes' Response to Nuclear Fuel Services, Inc.'s January 16, 2003, Motion to Deny Helms-Hughes Request for Standing and Leave to Intervene (Jan. 26, 2003) ("Strike Resp.").

¹¹ Request for Hearing and Leave to Intervene by Kathy Helms-Hughes in the Matter of Nuclear Fuel Services, Inc.'s Notice to Amend Its NRC Special Nuclear Materials License SNM-124 (Feb. 6, 2003).

March 7, 2003, reply to NFS's Response to Her Second Hearing Request.¹² 3rd Req. at 1 (footnotes added). She also makes several claims in her third hearing request regarding the harm her property will allegedly suffer from airborne emissions from the BLEU Project. 3rd Req. at 2. She attempts to raise a variety of concerns regarding NFS' third license amendment request that are not germane because they are not specific in any respect, they do not relate to NFS's third license amendment, or they are purely conjectural. See id. at 2-8.

NFS requests that Ms. Helms-Hughes' hearing request be denied because she lacks standing to participate in this proceeding, in that she does not show that she would suffer any injury-in-fact from the granting of the third license amendment. NFS also asks that Ms. Helms-Hughes not be admitted to this proceeding because she has not articulated any areas of concern that warrant a hearing on the requested license amendment.

II. ANALYSIS

Under the notice of opportunity for hearing, requests for a hearing on the NFS license amendment are to be evaluated under 10 C.F.R. Part 2, Subpart L. 68 Fed. Reg. at 796. Under Subpart L, a petitioner requesting a hearing must demonstrate the timeliness of its request, that it has standing, and that it has areas of concern "germane" to the subject matter of the proceeding. Atlas Corp. (Moab, Utah Facility), LBP-97-9, 45 NRC 414, 422 (1997); 10 C.F.R. §§ 2.1205(e) and (h). The Commission does not permit "notice pleadings" with respect to standing and areas of concern. Shieldalloy Metallurgical Corp. (Cambridge, Ohio Facility), CLI-99-12, 49 NRC 347, 353-54 (1999). Rather, it "insist[s] on detailed descriptions of the Petitioner's positions on issues going to both standing and the merits." Id. at 354.

¹² Reply by Kathy Helms-Hughes to NFS's Response to Her Second Hearing Request (Mar. 7, 2003) ("2nd Reply").

A. Ms. Helms-Hughes Lacks Standing

In determining whether to grant a petitioner's request to hold a hearing, the Presiding Officer must first determine whether the petitioner meets the judicial standards for standing and must consider, among other factors:

- 1) the nature of the requestor's right under the [Atomic Energy] Act to be made a party to the proceeding;
- 2) the nature and extent of the requestor's property, financial, or other interest in the proceeding; and
- 3) the possible effect of any order that may be entered in the proceeding on the requestor's interest.

10 C.F.R. § 2.1205(h). This is the test for standing familiar in NRC proceedings. See, e.g., Sequoyah Fuels Corp. (Gore, Oklahoma Site Decommissioning), CLI-01-02, 53 NRC 9, 13 (2001).

NFS discussed the law on standing in NRC materials licensing cases in detail in its response to Ms. Helms-Hughes' request for a hearing on NFS' first license amendment request.¹³ NFS incorporates that discussion by reference. NFS also incorporates by reference its discussion of standing in response to Ms. Helms-Hughes' hearing request on NFS's second license amendment.¹⁴ NFS responds to Ms. Helms-Hughes' other claims here. Ms. Helms-Hughes fails to demonstrate standing because she fails to show a realistic threat of direct, concrete, and palpable injury that is fairly traceable to the proposed license amendment. She impermissibly points to asserted harms connected to past or ongoing operations at the NFS facility and she makes only impermissibly vague and speculative claims, lacking in all detail, about potential harm arising from the amendment.

¹³ Applicant's Answer to Declaration of Kathy Helms-Hughes (Dec. 13, 2002) at 5-9.

¹⁴ Applicant's Answer to Request for Hearing and Leave to Intervene by Kathy Helms-Hughes on NFS' Second License Amendment Request (Feb. 21, 2003) at 5-9.

1. Allegations of Injury from Airborne Emissions Resulting from this License Amendment Do Not Provide Ms. Helms-Hughes with Standing

Ms. Helms-Hughes states that she “owns three parcels of land in Butler, Tenn., her primary place of residence, less than 20 miles downwind” from the NFS plant. 3rd Req. at 2. She claims that the prevailing wind disperses airborne effluent from NFS across her property and that “the BLEU Project” will result in increased emissions of uranium and thorium. Id. She claims that she and the caretakers of her property farm her land and drink spring water that flows across the property. Id. She claims that airborne emissions from NFS will have a negative impact on their health and will “place future generations at risk.” Id.

Ms. Helms-Hughes’ assertions do not provide her with standing. First, while she claims that her Butler, Tennessee property is her “primary place of residence,” on December 14, 2003, she filed a notice by e-mail with the NRC stating that, “I am currently working for a newspaper in Arizona. I am still a stakeholder in the NFS case, however, since I retain my property in Tennessee.” She gave her new address as a post office box in Fort Defiance, Arizona. Id. Therefore, her standing to intervene in this proceeding should be judged based on her presence in Arizona, not Tennessee. See, e.g., Washington Public Power Supply System (WPPSS Nuclear Project No. 2), LBP-79-7, 9 NRC 330, 336-38 (1979) (owner of and occasional visitor to farm 10-15 miles from power plant denied standing); see also Gulf States Utilities Co. (River Bend Station, Units 1 and 2), ALAB-358, 4 NRC 558 (1976) (dismissing petition of intervenor who moved away from vicinity of reactor).

Second, even assuming she were living on her Tennessee property, Ms. Helms-Hughes’ statement that she is concerned over BLEU Project airborne emissions affecting her property and its drinking water supply is not sufficient.¹⁵ Airborne radiological emis-

¹⁵ Ms. Helms-Hughes’ claims of potential injury to caretakers on her property cannot provide with standing. Claims of injury to others (with the possible exception of minor children) cannot provide one with legal

sions from the OCB and the EPB (the subject of NFS's third license amendment request), will be an extremely small fraction of what is permissible under applicable health and safety regulations and NFS's permits. The 1st EA conservatively estimates the dose rate to the maximally exposed individual from the BLEU Complex (of which the OCB and the EPB will be a part) to be only 0.008 mrem per year,¹⁶ which is 1/3,125 of the annual public dose limit of 25 mrem per year and only 1/45,000 of the average annual effective dose equivalent to a resident of the United States. See id. at 3-12 (360 mrem/yr).¹⁷ Moreover, the maximally exposed individual with respect to effluents (for total dose, the great majority of which is due to liquid effluents) is assumed to be living 8 miles from the NFS site, id. at 5-6, not just to own property 20 miles away as does Ms. Helms-Hughes.

Under NRC case law, mere potential exposure to minute doses of radiation within regulatory limits does not constitute a "distinct and palpable" injury necessary for standing. See Babcock and Wilcox (Apollo, Pennsylvania Fuel Fabrication Facility – Decommissioning Plan), LBP-93-4, 37 NRC 72, 87-88 (1993). "[S]imply showing the potential for any radiological impact, no matter how trivial, is not sufficient to meet the requirement of showing a 'distinct and palpable harm' [necessary for] standing." Pacific Gas and Electric Co. (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), LBP-02-23, 56 NRC 413, 428 (2002), review declined, CLI-03-12, 58 NRC 185

standing. Atlas, LBP-97-9, 45 NRC at 426 n.2 (citing Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-470, 7 NRC 473, 474 n.1 (1978)); Florida Power and Light Co. (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329 (1989).

¹⁶ As shown in Figure 2.2, the BLEU Complex includes both the OCB and the EPB (and the UNB whose operation is authorized by the first amendment). The dose calculation includes dose from all pathways, including agricultural exposure from deposited radionuclides. Id. at 5-6. Furthermore, the airborne radiological effluent calculations on which the EA dose estimates are based are conservative because no pollution control was assumed for a number of radionuclides, while in fact NFS will utilize pollution controls. Id. at 5-5.

¹⁷ Ms. Helms-Hughes makes arguments about how radionuclides deposited in the environment could come to affect her, see 3rd Req. at 2, but she does not show (or even assert) that the EA's assessment of total dose to exposed individuals from the various possible pathways of exposure is incorrect. If her arguments are interpreted as challenges to the EA, they should be rejected as the speculation of a lay person. See International Uranium (USA) Corp. (White Mesa Uranium Mill), CLI-01-21, 54 NRC 247, 253 (2001).

(2003). Stated differently, a negligible likelihood of radiation exposure above background does not constitute the “new or increased harm . . . or risk” that is necessary to provide a petitioner with standing. International Uranium (USA) Corp. (Source Material License Amendment), LBP-01-8, 53 NRC 204, 220, aff’d, CLI-01-18, 54 NRC 27 (2001). The minute increase above background that will result from airborne emissions due to the third license amendment—even for the maximally exposed individual—is simply insufficient to cause the palpable harm necessary to provide Ms. Helms-Hughes with standing.

2. Past NFS Operations Do Not Provide Ms. Helms-Hughes with Standing

In addition to asserting that her property will suffer harm from airborne emissions from NFS’ third license amendment, Ms. Helms-Hughes also asserts that airborne radiological effluents have been emitted from NFS since 1957. 3rd Req. at 2. Her claim does not provide her with standing to litigate this license amendment request. The Commission has stated repeatedly that “a petitioner seeking to intervene in a license amendment proceeding must assert an injury-in-fact associated with the challenged license amendment, not simply a general objection to the facility.” Commonwealth Edison Co. (Zion Nuclear Power Station, Units 1 and 2), CLI-99-4, 49 NRC 185, 188 (1999) (emphasis in original). “[A] petitioner’s challenge must show that the amendment will cause a distinct new harm or threat apart from the activities already licensed.” White Mesa, CLI-01-21, supra note 17, 54 NRC at 251 (quotations omitted, emphasis added); see White Mesa, LBP-01-8, 53 NRC at 219-20, aff’d, CLI-01-18, 54 NRC at 31-32.¹⁸ Thus, Ms. Helms-Hughes cannot rely NFS’s current or past operations to provide her with standing.

¹⁸ In White Mesa, a small increase in the truck traffic carrying radioactive material to a mill was found not to provide the petitioner with standing. LBP-01-8, 53 NRC at 219-20. The determination of injury-in-fact was based on the number of trucks that were to be added by the proposed amendment, not the cumulative total of trucks that were traveling to the mill under the license plus those that were to have traveled to the mill under the amendment. Id.

3. Ms. Helms-Hughes' Other Claims Do Not Provide Her with Standing

In addition to her claims of standing asserted in her request for a hearing on NFS's third license amendment, Ms. Helms Hughes also incorporates by reference all of her standing arguments from her requests for hearings on the first two BLEU Project amendments 3rd Req. at 1. Such arguments cannot provide her with standing.

First, Ms. Helms-Hughes broad and unspecified incorporation by reference of material she has previously filed concerning other license amendments is insufficient. The NRC is not and opposing parties should not "be expected 'to sift through the parties' pleadings to uncover and resolve arguments not advanced by the litigants themselves.'" Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-02-16, 55 NRC 317, 337 (2002).

Second, standing arguments pertaining to the first and second BLEU Project license amendments cannot provide her with standing to intervene in a proceeding on the third amendment. As noted above, a petitioner "must assert an injury-in-fact associated with the challenged license amendment, not simply a general objection to the facility." Zion, CLI-99-4, 49 NRC at 188 (emphasis in original). "[A] petitioner's challenge must show that the amendment will cause a distinct new harm or threat apart from the activities already licensed." White Mesa, CLI-01-21, 54 NRC at 251 (quotations omitted, emphasis added); see White Mesa, LBP-01-8, 53 NRC at 219-20.¹⁹ Here, the three BLEU Project license amendments are legally distinct because they only authorize the specific activities they describe—in no respect does one BLEU Project amendment authorize activities to be conducted under either of the other amendments. Therefore, any alleged "new

¹⁹ Case law also holds that a petitioner's standing in an earlier proceeding does not automatically grant standing in subsequent proceedings, even if the scope of the earlier and later proceedings is similar. Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-92-27, 36 NRC 196, 198 (1992) (citing Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Unit 1), LBP-92-4, 35 NRC 114, 125-26 (1992)).

harm” arising from one amendment can only arise from that amendment—it cannot arise from any others.

Further, as the federal courts have explained, “the requirement that a party demonstrate a direct and concrete injury in fact [to show standing] ‘is designed to limit access to the courts to those who have a direct stake in the outcome, as opposed to those who would convert the judicial process into no more than a vehicle for the value interests of concerned bystanders.’” Central and South West Services v. U.S. E.P.A., 220 F.3d 683, 701 (5th Cir. 2000); see also Westinghouse Electric Corporation (Nuclear Fuel Export License for Czech Republic - Temelin Nuclear Power Plants), CLI-94-7, 39 NRC 322, 331-32 (1994). Here, if Ms. Helms-Hughes were granted standing with respect to all amendments only on the basis of her showing regarding one amendment, her participation in the hearing regarding the other two amendments would be, inappropriately, that of a “concerned bystander.” Thus, Ms. Helms-Hughes cannot derive standing to request a hearing on the third amendment based on her standing arguments with respect to either the first or the second amendments.

Finally, to the extent that Ms. Helms-Hughes past standing arguments are read to apply to the instant third license amendment, NFS responds to the only distinct standing argument to which it has not previously responded.²⁰ In Ms. Helms-Hughes’ reply to NFS’s response to her hearing request on NFS’s second license amendment, Ms. Helms-Hughes raises the possibility of obtaining discretionary standing. 2nd Reply at 2 (citing Portland General Elec. Co. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610 (1976)). Ms. Helms-Hughes, however, does not meet the requirements for discretionary standing. It is well established that the most important factor in obtaining discretionary standing is the ability to assist in the development of a sound record. Pebble

²⁰ As noted above, Ms. Helms-Hughes incorporates by reference her arguments from 1st Reply, Strike Resp., and 2nd Reply, to which NFS has never had opportunity to reply.

Springs, CLI-76-27, 4 NRC at 617. The burden is on the petitioner to show that she can do so. Nuclear Engineering Co. (Sheffield, Ill. Low-Level Radioactive Waste Disposal Site), ALAB-473, 7 NRC 737, 745 (1978). Here, Ms. Helms-Hughes has not “show[n] significant ability to contribute on substantial issues of law or fact which will not otherwise be properly raised or presented, set forth these matters with suitable specificity to allow evaluation, and demonstrate[d] their importance and immediacy, justifying the time necessary to consider them.” See Pebble Springs, CLI-76-27, 4 NRC at 617. Further, the other Pebble Springs factors also weigh against her, in that her claim to standing of right is very weak and there are other petitioners who are raising concerns similar to hers and hence would effectively protect her interests if a hearing is held. In addition, Ms. Helms-Hughes’ participation in the hearing would invariably broaden and delay the proceeding. See id. at 616 (listing factors). Thus, she should not be granted discretionary standing.

B. Ms. Helms Hughes Has Not Proffered an Admissible Area of Concern

To obtain a hearing under Subpart L, a petitioner must also “describe in detail” “areas of concern” about the licensing activity in question. 10 C.F.R. § 2.1205(e)(3); see Shieldalloy, CLI-99-12, 49 NRC at 354. Areas of concern must be “germane to the subject matter of the proceeding.” 10 C.F.R. § 2.1205(h). They should be stated with reasonable specificity and with particularity. Shieldalloy, CLI-99-12, 49 NRC at 354. If the proceeding concerns a license amendment, germane areas of concern are limited to activities to be authorized by the amendment and do not include those authorized by the underlying license. See Energy Fuels Nuclear, Inc. (Source Materials License No. SUA-1358), LBP-94-33, 40 NRC 151, 153-54 (1994).

Areas of concern must have some factual basis. “Prior to acceptance of an area of concern, there must at least be a reference to some authority giving rise to the concern.” Molycorp., Inc. (Washington, Pennsylvania), LBP-00-10, 51 NRC 163, 175 (2000). “Information and belief” is patently inadequate.” Id. Concerns must be particularized in

some respect and show some significance so as to “appear that the concern is at least worthy of further exploration.” See International Uranium (USA) Corp. (White Mesa Uranium Mill), LBP-02-06, 55 NRC 147, 153 (2002).

1. Preparation of an EIS

Ms. Helms-Hughes asserts that the NRC Staff should prepare an EIS for the BLEU Project. 3rd Req. at 2. She cites the 1st EA’s description of the airborne emissions that will occur as a result of the BLEU Project and asserts that they will have a significant impact on the environment. Id.

This area of concern should be dismissed. First, Ms. Helms-Hughes does not specify in any respect which emissions or effects relate to the third license amendment. Germane areas of concern are limited to activities to be authorized by the amendment and do not include those authorized by the underlying license. See Energy Fuels Nuclear, LBP-94-33, 40 NRC at 153-54. Second, she merely asserts without any support or specificity that the impacts of NFS’s emissions on human health and the environment will be “significant.” Thus, her claim is only a “notice pleading” which the Commission has stated is insufficient to support an admissible concern. See Shieldalloy, CLI-99-12, 49 NRC at 354.²¹

2. Data to Evaluate Appalachian Cancer Risks

Ms. Helms-Hughes cites an August 2003 report prepared by East Tennessee State University regarding an attempt to develop a database of environmental exposure sources in Appalachian counties in several states that concluded that there was insufficient data to develop links between apparently high exposures to chemicals and rates of occurrence of cancer. 3rd Req. at 3-4; see also id. Exhibit 1. This issue should be dismissed as not ger-

²¹ Ms. Helms-Hughes claims that the lack of available data to determine the potential presence of a “cancer cluster” near the NFS site is a reason to require an EIS. 3rd Req. at 2-3. NFS responds to that concern below.

mane. 10 C.F.R. § 2.1205(h). Ms. Helms-Hughes does not even allege any error with respect to the NFS license amendment application. Nor is it apparent how the information in the report relates to NFS. Moreover, the report itself states that it could not draw a conclusion with respect to links between exposures to chemicals and cancer rates.

3. Cases of Cancer Located Near NFS

Ms. Helms-Hughes asserts that “an illustration of cancer cases on streets located within a half-mile of NFS begs further investigation, if only to disprove what appears obvious.” 3rd Req. at 4. She then lists cases of cancer that have allegedly occurred on streets near the NFS site. See id.

This concern should be dismissed. First, this proceeding concerns the third BLEU Project license amendment and thus NFS activities that will occur in the future. Existing or historical cases of cancer could not have been caused by NFS activities that have not yet occurred. Thus, the concern is not germane to the license amendment. Second, Ms. Helms-Hughes provides no information regarding when the cases of cancer occurred, where the victims were living or working when the cases first occurred, or where they had been living or working before the cases occurred (and for how long). Without such information, because of the latency of cancer, it is not possible to tie the occurrences of cancer to any site or activity. Furthermore, Ms. Helms-Hughes provides no information besides location, i.e., she provides no information related in any respect to causation, to link the cases of cancer to NFS. Therefore, for these reasons also this concern should be dismissed as not germane to this proceeding.

4. Alleged Withholding of Pre-Construction Ground Survey Information

Ms. Helms-Hughes asserts that a former Framatome ANP engineer has filed a complaint with the NRC alleging that NFS withheld information regarding a ground contamination survey from a neighboring resident. 3rd Req. at 4 (citing NRC Allegation Re-

port RII-2003-A-0168). The survey allegedly indicated that there could be contamination on the resident's property as well as the property of the CSX Railroad. Id.

This concern should be dismissed as not germane. First, Ms. Helms-Hughes does not assert that NFS has violated any regulation. An admissible concern under Subpart L "must be sufficient to establish that the issues the requester wants to raise regarding the licensing action fall generally within the range of matters that properly are subject to challenge in such a proceeding."²² The allegation did not claim that NFS withheld any information from the NRC. Thus, it does not allege any violation relevant to this proceeding. Second, the allegation is not tied in any respect to the third license amendment. The alleged existence of ground contamination, even if real, is irrelevant to the safety or environmental impacts of the activities to be conducted, in the future, under the third license amendment.

5. CSX Railroad Letter

Ms. Helms-Hughes asserts that the author of the complaint to the NRC stated that the local building inspector requested, via Framatome, a letter from CSX Railroad stating that the railroad agreed that construction of the BLEU facility would not impact the railroad yard. 3rd Req. at 5. Framatome allegedly refused to pay for an independent civil engineering analysis of the site and refused the request for the letter and then, supposedly, "the problem went away." Id. This concern should also be dismissed as not germane. Again, Ms. Helms-Hughes does not assert that the NFS application violates any requirements or that any information was withheld from the NRC.²³ Nor does she even allege

²² Informal Hearing Procedures for Materials Licensing Adjudications, Final Rule, 54 Fed. Reg. 8269, 8272 (1989).

²³ Whether information was or was not provided to a local building inspector is irrelevant to this proceeding.

that the site analysis would or could have shown any deficiencies with respect to the third license amendment.

6. Alleged Withholding of Information Concerning Change of Block Wall Design Requirements

Ms. Helms-Hughes claims that the complainant to the NRC alleged that Framatome management “purposely altered construction criteria after discovering that it was ignored by a contractor.” Id. at 5-6. Supposedly, the block wall “inside the BLEU facility” located in the vicinity of certain nuclear criticality detectors was not properly filled with concrete during construction. Id. at 6. When the problem was discovered, Framatome management allegedly changed the construction specifications for the wall to match what was built. Id. The complainant alleges that the radiation dose analyses performed to ensure the performance of the criticality detectors assumed that the block walls were filled with concrete and that thus there is now no documentation showing that the criticality detectors will work properly. Id. The complainant states that the construction company “tried to fill the voids, but were unaware of the importance of the problem.” Id.

This concern should be dismissed. NFS disagrees with Ms. Helms-Hughes assertions. Furthermore, NFS has not received the allegation from the NRC, nor has the NRC asked NFS for any information regarding the allegation, which is now four months old. In addition, Ms. Helms-Hughes has not shown that this concern pertains to the third license amendment. An allegation that the unfilled block wall was “inside the BLEU facility” does not show that it was anywhere near or relevant to the OCB or the EPB, which are the subject of this license amendment.²⁴

²⁴ The block wall is not part of or located near the OCB or EPB. It is part of the UNB and moreover is not located such that it would affect the performance of the criticality detection system in the UNB or elsewhere at the BLEU facility.

7. ISA Summary Concerns

Ms. Helms-Hughes asserts five areas of concern with respect to the Integrated Safety Analysis (“ISA”) Summary for the third license amendment. They should be dismissed as not germane to this proceeding.

a. Fire Resistance Barrier Between OCB and EPB

Ms. Helms-Hughes asks why the fire resistance rating of the wall between the OCB and the EPB defined as it is for other walls and asks whether it should be three hours. 3rd Req. at 6-7. This concern should be dismissed for failing to show some significance so as to “appear that the concern is at least worthy of further exploration.” See White Mesa, LBP-02-06, 55 NRC at 153. As shown in the 1st EA (at 2-4) and the ISA Summary (at 46), the two buildings are not in contact. The ISA Summary states that “[t]he exterior walls of the OCB are constructed of pre-cast concrete panels and the exterior walls of the [EPB] within 10 feet of the assumed property line [between the two buildings] are constructed with a 1-hour fire resistance rating with wall openings protected per the Standard Building Code.” ISA Summary at 46. “Since the [OCB] and the EPB will be separated as required to meet requirements identified on Table 600 in the Standard Building Code, no fire exposure is considered to exist between the two facilities.” Id. (emphasis added). Ms. Helms-Hughes does not provide any reason to believe that the fire separation between the OCB and the EPB violates any requirements. Thus, her concern does not “fall generally within the range of matters that properly are subject to challenge in [this] proceeding.” See 54 Fed. Reg. at 8272. Therefore, this concern should be dismissed.

b. Criticality Detection System

Ms. Helms-Hughes claims that the “ANSI compliance of the criticality detection system” is “in question” because of the allegation to the NRC discussed above. 3rd Req.

at 7. She also asserts that the complaint “bring[s] into question” the adequacy of construction quality verification measures (i.e., the density of the concrete walls deviating from numbers used in design calculations). Id.

As NFS states above, NFS disagrees with Ms. Helms-Hughes assertions regarding the allegation. Furthermore, NFS has not received the allegation from the NRC, nor has the NRC asked NFS for any information regarding the allegation. In addition, Ms. Helms-Hughes has not shown that this concern pertains to the third license amendment. An allegation that the concrete wall in question was “inside the BLEU facility” does not show that it was anywhere near or relevant to the OCB or the EPB, which are the subject of this license amendment.

c. Anti-Terrorism Features

Ms. Helms-Hughes asks whether “the uranium transportation and storage systems at BLEU” were designed “with any anti-terrorism features added.” 3rd Req. at 7. She asks whether “bounding accident scenarios” should be reviewed by the Department of Homeland Security “to ensure that the latest protections are utilized.” Id. She claims that railroad cars “meet Department of Transportation CFR49, which calls for cars to meet a 1981 standard.” Id.

This claim should be dismissed as not germane. Ms. Helms-Hughes points to nothing suggesting that either uranium storage systems used with the BLEU Project or railroad cars used to transport uranium to, from, or at the NFS facility are required to have “anti-terrorism” features or that they are inadequate in any other respect. Nor does she point to any requirement for review by the Department of Homeland Security with respect to this license amendment application. Thus, her claims do not concern matters that “properly are subject to challenge in [this] proceeding.” See 54 Fed. Reg. at 8272. “Prior to acceptance of an area of concern, there must at least be a reference to some authority

giving rise to the concern.” Molycorp, LBP-00-10, 51 NRC at 175. Here, there is no such authority and therefore the concern should be dismissed.

d. Neighboring Property Description

Ms. Helms-Hughes asserts that “[t]here is no mention of the Leonard property next door to NFS.” 3rd Req. at 7. She claims that the cited distance to the nearest residence (450 feet) is “questionable, and may not be an accurate representation of the distance to the property line, but rather to the actual residence.” Id.

This concern should be dismissed. First, there is no requirement to mention a property by name in an NRC license application. Second, Ms. Helms-Hughes has not shown that whether the distance to the residence is to the property line or the actual building is relevant to the evaluation of this application. In the ISA Summary, NFS performed its Environmental Safety Consequence Analysis “to determine exposure to the public from credible OCB/EPB accident scenarios.” ISA Summary at 195. In fact, the analysis was based on potential chemical exposure of “[a]n individual at the Controlled Area boundary.” Id. It was also based on potential radiological exposure “to any individual located outside of the controlled area.” Id. at 207. The Controlled Area boundary is closer to the locations of the postulated accidents, so the effects shown in the ISA summary are greater than they would have been if NFS had used the distance to the actual residence or the property boundary in its calculations. Thus, any question about the 450 feet is immaterial to the assessment of accident consequences. Therefore, this concern should be dismissed for failing to show some significance so as to “appear that the concern is at least worthy of further exploration.” See White Mesa, LBP-02-06, 55 NRC at 153.

e. “Buzzwords” and Fault Tolerance Requirements

Ms. Helms-Hughes asserts that “[t]he ISA Summary uses some industry buzzwords such as ‘Item Relied On For Safety,’ ‘Double Contingency’ and ‘Active Engineered Controls,’ but nowhere does it define any fault tolerance requirements for those systems.” 3rd Req. at 7. This concern should be dismissed as not germane. The terms cited by Ms. Helms-Hughes are terms of art defined in 10 C.F.R. Part 70 regulations. See 10 C.F.R. §§ 70.4 (items relied on for safety, double contingency principle), 70.61(e), 70.62 (discussing engineered controls). They apply to many different systems and activities related to the BLEU Project. (In fact, double contingency principle is not a type of system but rather a principle applied in evaluating the safety of process designs with respect to nuclear criticality.) Ms. Helms-Hughes does not point to anything in the regulations or elsewhere that requires the ISA Summary to define “fault tolerance requirements” for any systems related to the BLEU Project and NFS knows of none. Nevertheless, in assessing the safety of the BLEU Project facilities, NFS does take into account the reliability of the Items Relied on for Safety, which includes fault tolerance-type issues. See ISA Summary § 4.4 (Management Measures for IROFS). Therefore, this concern should be dismissed. See 54 Fed. Reg. at 8272; Molycorp, LBP-00-10, 51 NRC at 175.

8. Decommissioning

Ms. Helms-Hughes claims that “NFS has not adequately demonstrated financial assurance for the BLEU Project and decommissioning activities relate to that project.” 3rd Req. at 8. She challenges the NRC’s issuance of an exemption to NFS to allow it to rely on a letter of intent from the Department of Energy (“DOE”) with respect to payment of decommissioning costs. See id. She complains that in the past DOE has changed the standards to which it has cleaned up its energy-related sites. See id. She also complains of NFS’s actions related to the decommissioning of the West Valley, New York site. See

id. She asserts that “NFS’s decommissioning costs should be made public so that the public can evaluate the adequacy of funding.” Id.

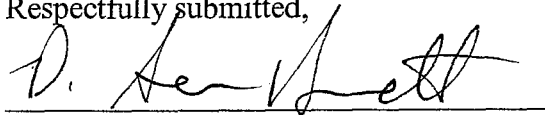
This concern should be dismissed. First, allegations about what DOE or NFS may or may not have done with respect to the decommissioning of other sites in the past are completely unrelated to the third BLEU Project license amendment and thus they are not germane to this proceeding. Second, with respect to the DOE letter of intent to pay decommissioning costs for the BLEU Project, Ms. Helms-Hughes provides no reason to believe that DOE will not, in fact, pay the costs it says it will. She merely states that, “The Road to Hell is paved with good intentions.” 3rd Req. at 8. The Commission has “long declined to assume that licensees will refuse to meet their obligations under their licenses or [its] regulations.” Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-03-02, 57 NRC 19, 29 (2003). The same should clearly apply to an agency of the federal government. “Prior to acceptance of an area of concern, there must at least be a reference to some authority giving rise to the concern.” Molycorp, LBP-00-10, 51 NRC at 175. Here, there is nothing more than a bare assertion. Thus, the concern should be dismissed.

Finally, Ms. Helms-Hughes request to make NFS’s decommissioning costs public should also be denied. First, her request is not a challenge to the NFS license amendment request. See 54 Fed. Reg. at 8272. Second, NRC regulations specifically protect against the disclosure of confidential commercial or financial information. 10 C.F.R. §§ 2.790(d) and 9.19. Ms. Helms-Hughes has not provided any valid reason for the NRC to stop protecting NFS’s decommissioning cost information from public disclosure.

III. CONCLUSION

For the foregoing reasons, the Presiding Officer should deny Ms. Helms-Hughes' request for a hearing on the license amendment application.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. Sean Barnett", is written over a horizontal line.

Daryl M. Shapiro

D. Sean Barnett

SHAW PITTMAN, LLP

2300 N Street, N.W.

Washington, DC 20037

(202) 663-8507

Counsel for Nuclear Fuel Services, Inc.

Neil J. Newman

Vice President and General Counsel

Nuclear Fuel Services, Inc.

Dated: February 12, 2004

CERTIFICATE OF SERVICE

I hereby certify that copies of Applicant's Answer to Third Request for Hearing by Kathy Helms-Hughes Regarding Nuclear Fuel Services' Proposed Blended Low-Enriched Uranium Project were served on the persons listed below by electronic mail or by facsimile and deposit in the U.S. mail, first class, postage prepaid, this 12th day of February, 2004.

*Office of Commission Appellate Adjudication
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Administrative Judge
Alan S. Rosenthal, Presiding Officer
Atomic Safety and Licensing Board Panel
Mail Stop – T-3 F23
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
Fax: 301-415-5599
email: rsnthl@comcast.net; sam4@nrc.gov

Administrative Judge
Richard F. Cole, Special Assistant
Atomic Safety and Licensing Board Panel
Mail Stop – T-3 F23
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
Fax: 301-415-5599
Email: rfl1@nrc.gov

Dennis C. Dambly
Angela B. Coggins
Office of the General Counsel
Mail Stop: O-15 D21
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
Fax: 301-415-3572
Email: dac3@nrc.gov; jme@nrc.gov;

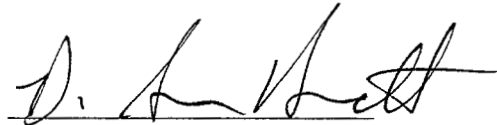
Louis Zeller
Blue Ridge Environmental Defense League
P.O. Box 88
Glendale Springs, NC 28629
Email: BREDL@skybest.com

Diane Curran
Harmon, Curran, Spielberg & Eisenberg,
L.L.P.
1726 M Street, N.W., Suite 600
Washington, D.C. 20036
Fax: 202-328-6918
Email: dcurran@harmoncurran.com

Office of the Secretary
U.S. Nuclear Regulatory Commission
11555 Rockville Pike
One White Flint North
Rockville, MD 20852-2738
Attention: Docketing and Service Branch
Fax: 301-415-1101
Email: hearingdocket@nrc.gov
(original and two copies)

*Kathy Helms-Hughes
P.O. Box 2394
Fort Defiance, AZ 86504
Email: khelms@frontiernet.net

**C. Todd Chapman, Esq.
King, King & Chapman, P.L.L.C.
125 South Main Street
Greeneville, TN 37743
Fax: 423-639-3629

A handwritten signature in black ink, appearing to read "D. L. Helms", written over a horizontal line.